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of Cleveland
Since 1905

October 31, 2018

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Magistrate Sandra R. Lewis

Cleveland Municipal Housing Court

P.O. Box 94894

Cleveland, OH 44101-4984

RE: Housing Court Local Rule – Eviction Sealing

Dear Magistrate Lewis:

On September 12, 2018, Judge Ronald J.H. O'Leary invited Cleveland Legal Aid to submit comments on the Proposed Housing Court Local Rule, which establishes a process to seal eviction records. Thank you for the opportunity to submit comments. Below are comments from Cleveland Legal Aid.

Proposed Local Rule 6.13: Motion to Seal Eviction Record:

The Proposed Local Rule is highly commendable. Eviction records are often detrimental to someone's ability to secure future housing. Landlords often presume culpability from the existence of an eviction filing on the public record, regardless of the actual outcome of the court case. Furthermore, it has been Legal Aid's experience that often landlords do not understand that an eviction filing is not equivalent to an eviction. For Legal Aid clients, who are generally under 200% of the federal poverty guidelines, an eviction filing may also impede access to subsidized housing.

While the government has a public policy interest in maintaining public access to court records, that interest must be balanced with the interests of the applicant seeking to seal a record. *Schussheim v. Schussheim*, 137 Ohio St. 3d 133, 2013-Ohio-4529, 998 N.E.2d 446, ¶ 16. "Courts have the inherent authority to expunge and seal records when a case involves unusual and exceptional circumstances and when the interests of the party seeking expungement outweigh the legitimate need of the government to maintain records." *Id.* ¶ 17.

Similarly, landlords have an understandable interest in access to background information, but that interest must also be balanced with ensuring that eviction records are used in a way that accurately reflects a case's outcome. Thus, we commend the Court for exercising its inherent authority to balance these interests.

Claudinne Feliciano v. Corelogic Saferent, LLC., United States District Court Southern District of New York, Case No.: 17-CV-05507.

These class actions allege that some credit reporting agencies inaccurately describe the disposition of housing court proceedings, even where those proceedings had been dismissed or resolved in some manner, therefore violating the Fair Credit Reporting Act, 15 U.S.C § 1681, *et seq.*

Upon information and belief, some of the credit reporting agencies that are part of those class action lawsuits currently do business in Ohio and provide reports to landlords locally. Thus, the reliability of records that may be available to establish that a tenant was not evicted in another jurisdiction is dubious. In the alternative, the Court should limit Subsection A.4.b to eviction judgments within the jurisdiction of this Court.

Proposed Local Rule 6.13 Section B:

Under Section B, the Rule should carve out an exception for cases settled by the parties pursuant to Subsection A.3, and clarify that for cases where a settlement agreement includes an agreement by the parties to seal the eviction record, a motion is not required.

Proposed Local Rule 6.13 Section C:

Subsection C.2 (“whether there are unusual and exceptional circumstances”) does not appear to be relevant to the standard set forth in Section A or the circumstances in Subsection A. 1-4. Accordingly, Subsection C.2 should be added to the list of circumstances in which the Court may order the Clerk to seal an eviction record in Section A.4.

Additionally, each subsection in part C of Proposed Local Rule 6.13 is relevant to only one example in Subsection A. 1-4. Specifically, the subsections correlate as follows:

- Subsection C.1 (“whether the sealing of the record is agreed to by the opposing party or counsel”) is relevant to Subsection A.3 (“whether the landlord consents to the Court sealing the record as part of an agreed settlement...”).
- Subsection C.3 (“the disposition of the first cause of action”) is relevant to Subsection A.1 (“the landlord dismisses the claim for eviction before adjudication of the issue of possession”).
- Subsection C.4 (“whether the opposing party has filed an opposition memorandum”) is relevant to Subsection A.3 (“the landlord consents to the Court sealing the record as part of an agreed settlement...”).

Based on the above, the Court should clarify when each subsection in Section C is relevant to the determination and thus will be considered when granting a Motion to Seal an Eviction Record.

Proposed Local Rule 6.13 Section D:

The Court should clarify that in addition to the tenant’s name any other identifiable information about the tenant will be redacted pursuant to Section D.

Proposed Local Rule 6.13 Section A:

Section A sets forth a standard of “when justice so requires.” This standard is again addressed in Subsection C.5, where it states the Court should, as a general proposition, consider the “legitimate need of government to maintain a public record of the case.” Because Subsection C.5 addresses the standard, this section should be combined with the initial statement of the standard in Section A. For example, Section A could read as follows:

“Notwithstanding the legitimate need of government to maintain a public record of the case, the Court may order the Clerk to Seal an eviction record when justice so requires, including in the following circumstances:...”

Next, in addition to the circumstances included in Section A (Subsections A.1-4), Section A should include these two following types of cases: 1) cases where the Court dismisses the case for the landlord’s failure to prosecute; and 2) cases where the tenant was evicted because the property was foreclosed upon.

Finally, regarding the language and construction of Proposed Local Rule 6.13, the proposed rule should consistently use either “eviction” or “first cause of action”.

Proposed Local Rule 6.13 Subsection A.4:

The requirements set forth in Subsection A.4 are onerous. Specifically, the requirement that five years must pass since the landlord obtained the judgment and since the tenant obtained an eviction judgment in any jurisdiction, is in contradiction with the spirit of Proposed Local Rule 6.13.

Eviction cases are often complex, presenting a mixture of state statutes governing landlord-tenant relationships, common law property and contracts law, and federal law governing fair housing and public and subsidized housing programs. Only about 2% of tenants are represented in court by an attorney in Cleveland, therefore, it is difficult for pro-se litigants to identify and present defenses that may be available to them. The lack of legal representation may result in some tenants having eviction judgments issued against them, even though the eviction may have been defensible. Therefore, we respectfully urge the Court to lessen the application of Subsection A.4.a from five years to three years.

Furthermore, the court should remove the requirement that a tenant not be evicted in any jurisdiction for five years, as mandated in Subsection A.4.b. Because of the inaccuracy and unsystematic manner that eviction records are maintained by third party reporting agencies and different jurisdictions, it will be extremely difficult for a tenant to establish that they have not obtained an eviction judgment in another jurisdiction.

Ongoing class action litigation in several jurisdictions address this very issue. For example, in New York City and Philadelphia, class actions have been filed against various credit reporting agencies that sell reports to landlords about individuals seeking residential housing. *See Patricia McIntyre v. Rentgrow, Inc.*, United States District Court Eastern District of Pennsylvania, Case No.: 18-CV-03793;

Proposed Local Rule 6.13 additional recommendations:

In addition to the above, we encourage the Court to consider creating a pamphlet or standard forms that may be utilized for the eviction sealing process. While the process is different, attached as a sample is the pamphlet and forms used in Minnesota.

We would be glad to discuss our comments with the Court and thank you for the opportunity to submit comments to Proposed Local Rule 6.13.

Sincerely,



Abigail C. Staudt
Managing Attorney



Hazel G. Remesch
Supervising Attorney

Enclosures: As Stated.

HGR/ACS



Expunging an Eviction Case

What does “expungement” mean?

Expungement means removing the record of a court case from the **public** view. If your eviction court case is expunged, then someone searching court files cannot find a record of your eviction case. Courts can expunge eviction cases in some situations, but it is usually hard to get an expungement of an eviction court case.

Note: Eviction cases used to be called “unlawful detainers” (UDs). Some records might show that you have UD, this is the same thing as an eviction.

When can the court expunge an eviction case?

A judge (or referee) decides if a case can be expunged. The law lists things you need to show the judge in order for the judge to expunge a case. But, even if you show all of the things the law says, it is still up to the judge to decide yes or no.

There are a few rare exceptions when a judge **has to** grant an expungement. They are listed in the section on the next page, *Mandatory expungement*.

There are 3 types of expungement you can ask for.

- Statutory expungement
- Expungement within the court’s inherent authority
- Mandatory expungement

If it fits your situation, you can check off more than one type of expungement on the court form.

Statutory expungement

The judge can decide to expunge your case if you show these 3 things:

1. The landlord’s case was sufficiently without basis in fact or law
2. It is clearly in the interests of justice to expunge the case and
3. The public’s interest in knowing about the case is not stronger than the justice that would be accomplished by expunging the case.



Here are examples of ways you can show these 3 things:

For #1: You can talk about things that were wrong with the case. Like, the court papers weren't served the right way, or the case was about nonpayment of rent but there were things at the property that needed repairs.

For #2: You can explain if the eviction was related to a hard time in your life, like job loss, medical problems, or divorce. If you still live at the property the eviction was about, make sure you explain that. Tell why expungement is important to you.

For #3: If this is the only eviction ever filed against you or if the case is old and you haven't had any recent evictions you can explain that in #3. Also talk about how the eviction makes it hard for you to find housing – list how many times you have been denied housing because of eviction(s) on your record and how much money you spent on application fees. Explain why safe, stable and affordable housing is important to you and your family, and how the case prevents you from finding housing.



Expungement within the court's inherent authority

In Minnesota a judge can expunge a case because the court has "inherent authority" over its own files. This means a judge can decide to expunge your case if the judge feels it is deserved. You need to show these 2 things:

1. Expungement is necessary to the performance of a judicial function. Expungement is necessary for justice and
2. The benefits of expungement to you are equal to, or greater than, any disadvantage to the public from not being able to see the case and any work the court has to do to expunge the case.

For #1 explain why it is fair to expunge the case. Look at the examples for #1 and #2 above for ideas.

For #2 explain why it's important to you to have the case expunged. Look at the examples for #3 above for ideas.

Mandatory expungement

There are a few rare cases when the judge **has to** expunge your case. The judge has to expunge your case if you prove:

- the property was in foreclosure or contract for deed cancellation

- the eviction case was only about you staying at the property too long (holdover), not about nonpayment of rent or breaking your lease (breach), and
- at least one of the following is true:
 1. The foreclosure redemption period or time for contract cancellation is over. You moved out before the eviction case was served.
 2. You were a tenant during the foreclosure redemption period or contract cancellation period. Your lease began after the landlord's mortgage or contract for deed began. You were not given proper notice to end your lease, or you were given proper notice to end your lease but the eviction case started before the date the notice said you needed to move.

Note: In foreclosure cases a minimum of 90 days' notice is usually required. In contract for deed cases, a 12 months' notice is required. If you're not sure if you were given proper notice see our fact sheet, *When your Landlord Loses the Building: Mortgage Foreclosure and Contract for Deed Cancellation.*

What if I paid the rent after the case started?

Paying what you owed does not take the case off your record. Paying what you owe does not guarantee expungement.



What are examples of good cases for expungement?

- You won the case. The case was dismissed or you won after a trial.
- You moved before the eviction case was served.
- You settled the case and your landlord agreed that it had been filed because of a misunderstanding or that you had defenses.
- Your landlord agreed not to oppose expungement. Your landlord can't give you an expungement, but the landlord's agreement not to oppose expungement can help.

How do I ask the court for expungement?

1. Look at all of the court documents in your eviction case including the court's decision. If you do not have a copy, go to the courthouse where it was filed and ask for one. There may be a cost for copies.

Does the court record show that the landlord did not have a good case? There are many defenses to an eviction case that you could use to try to show the court that the landlord did not have a sufficient basis in fact or law for the case. If possible, meet with a lawyer who knows about eviction cases to help you identify any defenses you may have had to the eviction.

2. There is an Expungement Motion form at the end of this fact sheet.

- At the top, fill in:
 - The name of the county
 - The Plaintiff's name or names (your landlord, or the owner) and the Defendant's name or names (your name). **These have to be filled in exactly as they are on the Complaint and Court Order form in the eviction case even if the names are spelled wrong.**
 - The file number of your eviction case



- Do not fill in the "Notice of Motion" section until the court gives you a hearing date.
- Fill out the rest of the form. Check the box by the kind of expungement you are asking for. You can check more than one.

If there is nothing wrong with the landlord's case **do not** check Statutory Expungement and do not fill out #4. Fill out #5, #6 and #7.

- Sign your Motion.
- Attach copies of any documents that help prove what you've said in the motion is true.

3. Go to District Court to file your Motion.

- Ask the clerk if you need to fill in the court date on the "Notice of Motion". Some counties want you to fill in the date, and some counties don't.
- Check with the clerk to see if a judgment was "entered" in your case. If so, some clerks also want you to fill out a motion to vacate the judgment. The clerk might tell you if you need to do this and give you a form.
- Ask the clerk for instructions on how to serve the "Motion" on the Plaintiff.

4. There is a filing fee for an expungement motion. If you have a low income, you can fill out a court fee waiver form (IFP). This form asks the court to waive the fees. The court has these forms or you can [create one online](#).

Go to www.LawHelpMN.org/resource/form-helper.



- Click on *Debts, Fees and Deposits*
- Click on *Court Fee Waiver (IFP)*

Bring proof of your income, like pay stubs, or proof of government assistance.

5. Go to the hearing prepared. Bring any documents that you included with your Motion, and anything else that might help you prove your case. Bring any witnesses who can support your story.

What should I do if I get an expungement?

Check the court records to be sure that the case was removed. The court clerk will tell you when your case will be expunged and how to check the record to make sure that it was removed.

A tenant screening company can't report an eviction once the company knows it has been expunged. There is a letter attached to this fact sheet. Make 6 copies. Sign them and send one with a copy of your expungement order to each of the tenant screening agencies listed on the top of the letter. Keep the original letter or a copy for your records.

If you get turned down for an apartment, find out what tenant screening agency the landlord used. Call that screening company to make sure they are not reporting the expunged eviction case. See our fact sheet [Tenant Screening](#) for more information.

What should I do if I can't get an expungement?

See our fact sheets [Looking for an Apartment](#) and [Tenant Screening](#), about finding an apartment with an eviction on your record. Try to apply only to landlords who don't charge application fees and don't use tenant screening services.



You have the right to add a statement to your tenant screening record explaining any evictions on your record. Also, make sure your tenant screening report is correct. It may have other wrong information about you. Ask the company to correct any errors in the report. Tenant screening companies can report evictions for 7 years, and landlords can check court files directly for as long as the court keeps records of old eviction cases.

Find more fact sheets at www.lawhelpmn.org/LASMfactsheets

Find your local legal aid office at www.lawhelpmn.org/resource/legal-aid-offices

Fact Sheets are legal information NOT legal advice. See a lawyer for advice.

Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.

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STATE OF MINNESOTA

DISTRICT COURT

JUDICIAL DISTRICT

COUNTY OF _____

CASE TYPE: EVICTION ACTION

Plaintiff(s) (Landlord),

**NOTICE OF MOTION AND
MOTION FOR EXPUNGEMENT**

v.

Case No. _____

Defendant(s) (Tenant).

TO: DISTRICT COURT ADMINISTRATOR; PLAINTIFF.

NOTICE OF MOTION

PLEASE TAKE NOTICE that at ____ a.m./p.m. on _____, Defendant will bring the following Motion on for hearing before the Honorable Presiding Referee or Judge, at the following location:

_____.

MOTION

1. I am asking the court to immediately expunge this court file. *(Check one or more of the following types of expungements- Statutory, Inherent Authority, Mandatory)*

☐ **Statutory Expungement¹**

2. The Court may order expungement upon finding that "plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record."² I explain my reasons in numbers 4-7 below.

¹ Minn. Stat. 484.014, subd. 2

² Minn. Stat. § 484.014, subd. 2

☐ **Expungement within the Court's Inherent Authority**

3. Courts have inherent authority to perform a judicial action when the relief requested "is necessary to the performance of a judicial function as contemplated in [the] state constitution."³ Courts also have inherent authority to control their own records, along with the equitable power to prevent unfairness to individuals.⁴ The court "must decide whether expungement will yield a benefit to the petitioner commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing, enforcing and monitoring an expungement order."⁵

I'm asking the court to expunge this file within its inherent authority for the following reasons: Expungement is necessary to the performance of the judicial function of effecting justice.⁶ The burden on the court in issuing an expungement order in this action is minimal. The benefits of expungement to me are equal to, or greater than, any disadvantage to the public from elimination of the record and any burden on the court in expunging the record of this case. I explain my reasons in numbers 4-7 below.

4. **These things were wrong about the landlord's case:** _____

5. **It would be fair to take this off my record because:** _____

³ *In re: Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781, 786 (Minn. 1976).

⁴ *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981).

⁵ *Id.*

⁶ Minn. Const. Art. 1 § 8.

6. This expungement will help me because: _____

7. The reasons I need an expungement are more important than the public knowing about my record because:

☐ **Mandatory Expungement because of Foreclosure**

8. The property in this case was in foreclosure. Expungement is mandatory under law.⁷

- ☐ a. I moved out of the property on _____, before this case started⁸ on _____. The foreclosure redemption period is over.

OR

- ☐ b. The landlord said I stayed past my move out date (holdover). I was a tenant at the property during the redemption period. My lease started after the landlord's mortgage began. *Check one:*

- ☐ i. I did not get the notice required by law.⁹
- ☐ ii. I received the notice required by law¹⁰, but this case started before the date I was supposed to move.

☐ **Mandatory Expungement because of Contract Cancellation**

9. The property in this case was in contract cancellation. Expungement is mandatory under law.¹¹

- ☐ a. I moved out of the property on _____, before this case started¹² on _____. The time for contract cancellation is over.

OR

- ☐ b. The landlord said I stayed past my move out date (holdover). I was a tenant at the property during the contract cancellation period. My lease started after the contract for deed. *Check one:*

- ☐ i. I did not get the notice required by law.¹³
- ☐ ii. I received the notice required by law¹⁴, but this case started before the date I was supposed to move.

⁷ Minn Stat. § 484.014, subd. 3.

⁸ In Minnesota a case starts at service. Minn. R. Civ. P. 3.01(A); *Appletree Square I, Limited Partnership v. W.R. Grace & Co.*, 29 F.3d 1283, 1286 (8th Cir. 1994); *Appletree Square I Limited Partnership v. O'Connor & Hannan*, 575 N.W.2d 102, 103 (Minn. 1998).

⁹ Minn. Stat. § 504B.285, subd. 1a requires minimum notice period of 90 days. Some tenants get a longer notice period.

¹⁰ *Id.*

¹¹ Minn. Stat. § 484.014, subd. 3.

¹² In Minnesota a case starts at service. Minn. R. Civ. P. 3.01(A); *Appletree Square I, Limited Partnership v. W.R. Grace & Co.*, 29 F.3d 1283, 1286 (8th Cir. 1994); *Appletree Square I Limited Partnership v. O'Connor & Hannan*, 575 N.W.2d 102, 103 (Minn. 1998).

¹³ Minn. Stat. § 504B.285, subd. 1a requires a minimum notice period of 90 days. Some tenants get a longer notice period.

¹⁴ *Id.*

10. I certify that, to the best of my knowledge:

- this document is not being filed for an improper reason, such as harassment or delay
- my claims are supported by the law and
- there is evidence for my claims and/or my denials

I know that I may be fined or sanctioned by the court if this certification is false.

I declare under penalty of perjury that everything I have stated in this document is true and correct.¹⁵

Date

Defendant (Tenant)

Address: _____

Email: _____

Phone: _____

¹⁵ Minn. Stat. § 358.116.

Letter to Tenant Screening Companies

Send to:

First Check
P.O. Box 334
Wyoming, MN 55092

Multi-Housing Credit Control (MCC)
10125 Crosstown Circle, Suite 100
Eden Prairie, MN 55344

Rental History Reports
701 5th Street South
Hopkins, MN 55343

Rental Research Services, Inc.
7525 Mitchell Rd, Suite 301
Eden Prairie, MN 55344

Screening Reports, Inc.
220 Gerry Dr.
Wooddale, IL 60191

Twin City Tenant Check
910 Ivy Avenue East
St. Paul, MN 55106

TenantReports.com
P.O. Box 450
Springfield, PA 19064

Date: _____

Dear Directors:

I am the tenant listed in the enclosed expungement order(s).

Minnesota Statutes § 504B.241, Subd. 4 says that "If a tenant screening service knows that a court file has been expunged, the tenant screening service shall delete any reference to that file in any data maintained or disseminated by the screening service."

Subdivision 2 states that "At the request of the individual, the residential tenant screening service must give notification of the deletions to persons who have received the residential tenant report within the past six months."

I am asking you to delete all of your references to this court file, and that you notify anyone who got my tenant report in the last 6 months that the eviction was expunged and deleted from my file.

Minnesota law does not permit tenant screening agencies to ask for any other information on tenants before taking this action.

Please contact me if you have any questions. Thank you.

(signature)